



**Attorney General  
Betty D. Montgomery**

October 18, 1996

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**OCT 21 1996**

**FCC MAIL ROOM**

*Via Overnight Mail*

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D. C. 20554

Re: *In the Matter of Implementation of the  
Pay Telephone Reclassification and  
Compensation Provisions of the  
Telecommunications Act of 1996, CC 96-  
128.*

Dear Mr. Caton:

**DOCKET FILE COPY ORIGINAL**

Enclosed please find the original and fourteen copies of **Petition for Reconsideration** in the above-referenced matter. Please return a time-stamped copy to me in the enclosed stamped, self-addressed envelope

Thank you for your assistance in this matter.

Respectfully submitted,

A handwritten signature in cursive script, reading "Johnlander Jackson-Forbes".

**Johnlander Jackson-Forbes**  
Assistant Attorney General  
Public Utilities Section  
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Columbus, Ohio 43266-0573  
(614) 466-4397

JJF/kja

Enclosure

cc: Common Carrier Bureau, Enforcement Division  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of )  
Implementation of the )  
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and Compensation Provisions of the )  
Telecommunications Act of 1996 )

CC Docket No. 96-128

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EXECUTIVE SUMMARY  
PETITION FOR RECONSIDERATION AND CLARIFICATION  
SUBMITTED ON BEHALF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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The Public Utilities Commission of Ohio (PUCO) maintains that the Federal Communications Commission (FCC) has misinterpreted the level of authority over the individual states granted to it by Section 276. The PUCO acknowledges that Congress intended for the FCC to establish guidelines regarding the provision of payphone services; however, the PUCO believes that no subsection of Section 276 either explicitly or implicitly authorizes the FCC to regulate directly the price of the LECs' central office coin services. Moreover, the PUCO observes that no language is contained in Section 276 that either explicitly or implicitly authorizes the FCC to reclassify LEC-provided central office coin services to interstate access services, which until the present have been under the jurisdiction of the individual states.

The PUCO submits that the FCC could establish broad parameters that ensure against discriminatory rates within which the states would be required to follow upon performing their own cost review and analysis of the ILECs' central office coin services rates and tariffs. The PUCO notes that the FCC could also perform a cost review of the LECs' proposed rates and tariffs, which could be utilized by states

that do not possess the necessary resources to perform their own cost reviews on a timely fashion during the first year phase-in to market-based rates at pay stations.

State commissions must have authority to place "public interest payphones" in locations in which the marketplace is not operating properly even if there is a payphone already at that location. Moreover, the state commissions must have the ability to place reasonable caps on end user rates which will permit payphone providers to earn a reasonable return, but which will also be fair to end users. It has been the experience of the PUCO that the marketplace does not always operate freely in supplying reasonably priced payphone service to end users. The PUCO notes that the payphone marketplace is inherently dysfunctional in that agreements for the provision of service are between PSPs and property owners, and not between the PSPs and end users - as they should be under normal circumstances.

The PUCO directs to the FCC's attention that Congress did not intend that the FCC have the authority to preempt state commissions in the area of setting end user rates. In the legislative history for Senate Bill 652, a precursor of the Telecommunications Act of 1996, the Senate Committee of Commerce, Science, and Transportation clarified its intent regarding the authority of state commissions in the area of setting end user rules. The Committee stated that:

"Nothing in this section is intended to remove the current authority of the FCC or the States to address these issues or to prevent the FCC or the States from regulating pay phone service, including the regulation of rates to end users charged by all public phone providers, both independent companies and the Bell operating companies."

S. Rpt. 104-23, Report of the Committee on Commerce, Science, and Transportation on S. 652 (1995) at page 58.

**Before the**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC 20554**

In the Matter of	)	
Implementation of the	)	
Pay Telephone Reclassification	)	CC Docket No. 96-128
and Compensation Provisions of the	)	
Telecommunications Act of 1996	)	

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**PETITION FOR RECONSIDERATION AND CLARIFICATION**  
**SUBMITTED ON BEHALF OF**  
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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**INTRODUCTION AND BACKGROUND**

The Public Utilities Commission of Ohio (PUCO) hereby submits its Petition for Reconsideration and Clarification (Petition) of the Federal Communications Commission's (FCC's) Report and Order (Order) released on September 20, 1996, in CC Docket No. 96-128 (In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996).

The FCC maintains that its Order, in CC Docket No. 96-128, adopts rules pursuant to the directives of Section 276 of the Telecommunications Act of 1996 (1996 Act). Section 276 directs the FCC to ensure, among other things, that all payphone service providers (PSPs) are compensated for calls originated on their payphones, and to discontinue all intrastate and interstate subsidies for payphones owned by incumbent local exchange carriers (ILECs). Section 276(b)(1)(D) further states that the FCC should prescribe a set of nonstructural safeguards for the Bell Operating Companies (BOCs) payphone services to ensure that the ILECs do not

subsidize their payphone services or discriminate in favor of their own payphone services. Congress directed that these safeguards shall, at a minimum, include the nonstructural safeguards equal to those adopted in the Computer Inquiry III (CC Docket No. 90-623) proceeding. As discussed in more detail in this Petition, the PUCO challenges the FCC's interpretation of Section 276 of the 1996 Act, which concludes that the FCC has the requisite authority to reclassify LEC-provided central office coin services from local services to access services subject to the FCC's review and approval. The PUCO also submits the state commissions must have the ability to monitor market dysfunctions, and where the marketplace breaks down, it must have the ability to authorize a "public interest payphone" even at those locations where payphones already exist. Further, the state commissions must have the ability to place an end-user rate cap on the price of a local call.

## **DISCUSSION**

### **The Unbundling of Payphone Services**

In an attempt to realize the directives in Section 276 regarding nondiscrimination, the FCC (among other things) reclassifies all ILEC payphones to deregulated customer premise equipment (CPE), and requires ILECs to offer individual central office coin services to all PSPs on a nondiscriminatory, public, tariffed basis if the LECs provide those services to their own options. Order at Paragraph 146. Because LECs may have an incentive to charge their competitors unreasonably high prices for these services, the FCC concludes that it will require all ILECs nationwide to provide it with proposed tariffs and cost support for central office coin services provided to PSPs by no later than January 15, 1997. Order at Paragraph 146.

The FCC further concludes that tariffs for payphone services must be filed with the FCC as part of their access services to ensure that services are reasonably

priced and do not include subsidies. Order at Paragraph 147. The FCC notes that this requirement is consistent with the prescription in Section 276 that all subsidies be removed from payphone operations. The FCC further notes that, pursuant to Section 276(c), any inconsistent state requirement is preempted. Order at Paragraph 147.

The PUCO maintains that the FCC has misinterpreted the level of authority over the individual states granted to it by Section 276. The PUCO acknowledges that Congress intended for the FCC to establish guidelines regarding the provision of payphone services; however, the PUCO notes that no subsection of Section 276 either explicitly or implicitly authorizes the FCC to directly regulate the price of the LECs' central office coin services. Moreover, the PUCO observes that no language is contained in Section 276 that either explicitly or implicitly authorizes the FCC to reclassify LEC-provided central office coin services to interstate access services, which until the present have been under the jurisdiction of the individual states.

If the FCC believes it must establish a process to ensure against subsidies remaining in the ILECs' charges for central office coin services, the PUCO submits that the FCC could establish broad parameters that ensure against discriminatory rates within which the states would be required to follow upon performing their own cost review and analysis of the ILECs' central office coin services rates and tariffs. These same FCC-imposed parameters could also apply when a LEC proposes to either increase or decrease its then-current rates for these services after approval of the initial rates.

The PUCO notes that the FCC could also perform a cost review of the LECs' proposed rates and tariffs, which could be utilized by states that do not possess the necessary resources to perform their own cost reviews on a timely fashion during the first year phase-in to market-based rates at pay stations. These rates could be later amended by the states subject to their own local regulatory parameters, if the

revisions continue to be within the broad regulatory pricing parameters established by the FCC, which are intended to ensure against discriminatory rates.

The FCC indicates that BOCs must unbundle network components consistent with the requirements of Computer Inquiry III and Section 276 of the 1996 Act. Order at Paragraph 148. The FCC also indicates that it is not necessary to direct other LECs to unbundle additional services, other than basic transmission services. Order at Paragraph 148. The FCC points out, however, that states may impose further unbundling requirements on non-BOC LECs that are not inconsistent with Section 276 and the requirements established in its Order for the BOCs. Order at Paragraph 148.

The PUCO observes that if the states are granted the option to require non-BOC LECs to unbundle additional coin related services from basic coin delivery transmission services, the states must maintain the authority to review the associated cost studies and to require tariff revisions based upon that review. To this end, the PUCO notes that the FCC's Order must be clarified to indicate that states will continue to possess this authority.

On a related matter, the PUCO notifies the FCC that the BOC operating in Ohio (Ameritech) is currently subject to intrastate price caps regulation. As a result, Ameritech, prior to revising an intrastate rate, must ensure the current price change is within the price caps index; within annual price change parameters; and if the proposed change is for an initial change in rates under the plan, Ameritech must also provide the PUCO with a cost study. The PUCO submits that, subject to these additional intrastate regulatory parameters, Ameritech could revise its price for central office coin services and still meet the nondiscrimination and costing requirements imposed by the Computer Inquiry III safeguards. The PUCO, however, is the only regulatory body that is keenly aware of Ameritech's local regulatory parameters. Consistent with the PUCO's position taken above, the PUCO

recommends that as an alternative to performing ongoing day-to-day administration associated with these service filings, the FCC should develop broad regulatory parameters, consistent with the Computer Inquiry III nondiscrimination safeguards, within which each state would have the opportunity to function.

### **Market-Based Rates and Public Interest Payphones**

Throughout the FCC's Order, the assumption is made that the marketplace will operate to keep end user rates at a reasonable level. This assumption is simply not true based on the experience of the PUCO. In formulating its original comments, the PUCO believed that "public interest payphones" could be placed in any location in which the marketplace did not provide a reasonably priced payphone. The FCC rules, however, would prohibit placement of a "public interest payphone" in a location where a payphone provider was realizing extraordinarily high profits from end users who had no other viable alternatives for payphone services. Order at paragraph 282. To remedy this, state commission must have authority to place "public interest payphones" in locations in which the marketplace is not operating properly even if there is a payphone already at that location. Moreover, the state commissions must have the ability to place reasonable caps on end user rates that will permit payphone providers to earn a reasonable return, but which will also be fair to end users.

It has been the experience of the PUCO that the marketplace does not always operate freely in supplying reasonably priced payphone service to end users. The PUCO notes that the payphone marketplace is inherently dysfunctional in that agreements for the provision of service are between PSPs and property owners, and not between the PSPs and the end users - as they should be under normal circumstances. For example, lucrative and somewhat isolated locations such as airports, hospitals, or hotels typically permit payphones to be provided by only one vendor, thus eliminating competitive choices for end users. Further, airports,

hospitals, and hotels have no incentive to contract with a payphone provider who charges the lowest end user rates, because this may tend to undercut profits realized by the airport, hospital, or hotel in providing space to the payphone provider.

The PUCO has also found that municipalities are contracting with only one vendor, and that the only market force in place is for the end users to choose not to use a payphone at all. Further, the cities of Cincinnati and Cleveland have ordinances that restrict placement of payphones and the number of payphones in certain areas. The remaining payphones are often operated by the same vendor, and end users have no option but to either use those payphones or not place a call.

Local exchange companies have also been discontinuing placement of payphones and eliminating payphones in public areas they deem to be unprofitable. To replace those payphones, private owners must provide space, and contract with private payphone operators. The experience of the PUCO has been that, although the end user rate is capped at \$.25, private payphones tend to have extraordinarily high rates for operator services, and long distance calls, and tend to violate current Ohio regulations concerning no time limitations on the length of calls, and no charge for directory assistance. Clearly, if the PUCO has no authority to limit the amount charged for a local call, private payphone providers will likely charge very high rates for a local call. For example, a location such as a low income apartment complex may be served by only one provider. Under that circumstance, the market would not necessarily operate to keep rates to end users at a reasonable level. Pursuant to the Order, such locations would not only be ineligible for a "public interest payphone" because payphone service was already being provided, but would also not encounter competition.

The PUCO further calls to the FCC's attention that low income residential areas are often those same locations where local residential access line penetration rates are at their lowest levels. Additionally, customers residing at these locations

are often not highly mobile. As a result of these circumstances, they may be forced, because of a dysfunctional payphone marketplace, to use a payphone that will levy unreasonable charges. The PUCO submits that it would not be unreasonable to place an end-user rate ceiling on the cost of a local call at these locations and/or to subsidize instruments at these locations on a nondiscriminatory basis consistent with the requirements of Section 276.

The PUCO directs to the FCC's attention that Congress did not intend that the FCC have the authority to preempt state commissions in the area of setting end user rates. In the legislative history for Senate Bill 652, a precursor of the Telecommunications Act of 1996, the Senate Committee of Commerce, Science, and Transportation clarified its intent regarding the authority of state commissions in the area of setting end user rules. The Committee stated that:

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The police powers of the states, such as setting rates for public utility services, are not to be superseded by federal enactments "unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *Jones v. Rath Packing Co.*, 430 U.S. 519 (1977). Not only does the Telecommunications Act of 1996 not give the FCC authority to preempt the states concerning regulation of end user rates, but the legislative history of the Act indicates the exact opposite. Further, the Act does not preempt state commissions' authority to determine appropriate locations for "public interest payphones." The

legislation as well as the public interest demands that this authority vest in state commissions, which are in the best position to determine both whether rate caps are needed, and appropriate locations for "public interest payphones."

State commissions must have the ability to monitor market dysfunctions, and where the marketplace breaks down, it must have the ability to authorize a "public interest payphone" even in areas which already have payphones. Further, the state commissions must have the ability to place an end-user rate cap on the price of a local call when payphone providers are realizing extraordinarily high profits because customers are still, in effect, in a monopoly situation. Accordingly, the PUCO, requests that the FCC modify its rules consistent with this petition.

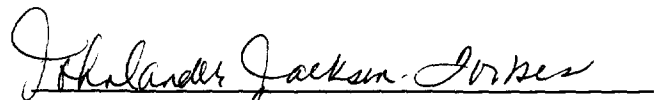
## CONCLUSION

In closing, the PUCO wishes to thank the FCC for the opportunity to file this Petition for Reconsideration and Clarification in this proceeding.

Respectfully Submitted,

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